

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v.

2:07CR53

ARTURO MARTINEZ-BARRERO,

Defendant.

REPORT AND RECOMMENDATION
CONCERNING GUILTY PLEA

Defendant, by consent, has appeared before the undersigned pursuant to Rule 11, Federal Rules of Criminal Procedure, and referral from a United States District Judge and has entered a guilty plea to reentry of a deported alien subsequent to an aggravated felony conviction, in violation of 8 U.S.C. §§ 1326(a) and (b)(2). Defendant is also charged with conspiracy to possess and distribute 100 kilograms or more of marijuana (Count 1), and possession and distribution of marijuana (Counts 2 and 3), in violation of 21 U.S.C. §§ 841(a)(1) and 846. Defendant understands that these charges will be dismissed upon acceptance of his guilty plea, and the United States confirmed defendant's understanding.

On January 25, 2008, defendant, who is a Mexican, appeared before the Court for the purpose of entering his guilty plea, assisted by a Spanish interpreter. He was represented by retained counsel, John C. Gardner, Esquire. Defendant has had four attorneys, three of which were fired, and his present counsel is retained. At the beginning of the proceeding, defendant stated that all of the documents involved in the plea agreement had been explained to him and that he was satisfied with the conduct and advice of his attorney. Defendant's counsel informed the

Court that in all of his interviews with defendant, a translator was present to assist, if needed. Defendant, who speaks English as a second language, nodded in agreement.

Defendant was appropriate in appearance, responsive, and competently prepared for the hearing. He answered all questions put to him in clear and concise language. On those occasions when he had a question, defendant consulted with counsel and then promptly answered. Defendant acknowledged his ability to understand what the Court was doing at every stage. Defendant was courteous and appropriate in his behavior at all times and clearly understood the seriousness of his position. At the close of the proceeding, defendant was remanded to the custody of the United States Marshal, pending completion of a presentence report.

Defendant is forty-three years of age, graduated from high school in Mexico, and speaks Spanish as his native language. There was no evidence that defendant was on drugs, alcohol, or medication which might impair his judgment. He was cooperative throughout the proceeding.

Defendant entered his guilty plea pursuant to a plea agreement. The Court is completely satisfied, based upon defendant's responses, that he fully appreciates his position. Furthermore, he acknowledged that the statement of facts prepared in anticipation of his plea accurately reflects the government's evidence, in the event of trial.

After cautioning and examining defendant under oath concerning each of the subjects mentioned in Rule 11, the Court determined that the offense charged is supported by independent facts, establishing each of the essential elements of such offense. Therefore, the Court recommends

that the guilty plea be accepted and that defendant be adjudged guilty and have sentence imposed accordingly.

Failure to file written objections to this report and recommendation within ten days from the date of its service shall bar an aggrieved party from attacking such report and recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).

/s/
James E. Bradberry
United States Magistrate Judge

Norfolk, Virginia

January 25, 2008